

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

Witness

Date 12/14/00 Reporter DV

ILLINOIS BELL TELEPHONE COMPANY (Ameritech Illinois)  
and TALK.COM HOLDING, INC.

00-0755

Joint Petition for Approval of Merger Amendment to the  
Resale Agreement dated October 11, 2000, pursuant to  
47 U.S.C. § 252VERIFIED STATEMENT OF MELANIE K. PATRICK, Ph.D.

## INTRODUCTION

My name is Melanie K. Patrick, and I am employed by the Illinois Commerce Commission as a Policy Analyst in the Telecommunications Division. I graduated from Carnegie Mellon University in Pittsburgh, PA, with a Bachelor of Science degree in Public Policy and Management in 1986, and with a Master of Science degree in Public Management and Policy in 1987. In 1999, I received the degree of Doctor of Philosophy in Political Science from Brown University in Providence, RI, earning an additional Master of Arts degree from Brown University, also in Political Science, in 1993. Among my duties as a Policy Analyst is to review negotiated agreements and provide a recommendation as to their approval.

## SYNOPSIS OF THE AGREEMENT

Docket 00-0755 contains a Negotiated Interconnection Agreement between ILLINOIS BELL TELEPHONE COMPANY ("AMERITECH ILLINOIS") and TALK.COM HOLDING, INC. ("TALK.COM") that will remain in effect until September 24, 2001. The agreement shall continue in effect unless either party gives the other party at least one hundred eighty (180) days written notice of termination. The agreement establishes

financial and operational terms for: resale of services; collocation; access to the AMERITECH-ILLINOIS unbundled network element (UNE) platform; mutual and reciprocal compensation; number portability; resale; database access; and other business relationships.

## **STANDARD OF REVIEW**

The purpose of my verified statement is to examine the agreement based on the standards set forth in section 252(e)(2)(A) of the 1996 Act. Specifically, this section states:

- The State commission may only reject-
- an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that-
  - (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
  - (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.

## **APPROVAL UNDER SECTION 252(e)**

### **A. Discrimination**

The first issue that must be addressed by the Commission in approving or rejecting a negotiated agreement under Section 252(e)(2)(A) is whether it discriminates against a telecommunications carrier that is not a party to the agreement. Discrimination is generally defined as giving preferential treatment. In previous dockets, Staff has taken the position that, in order to determine if a negotiated agreement is discriminatory, the Commission should determine if all similarly situated carriers are allowed to purchase the service under the same terms and conditions as provided in the agreement. I recommend that the Commission use the same approach when evaluating this negotiated agreement.

A carrier should be deemed to be a similarly situated carrier for purposes of this agreement if telecommunications traffic is exchanged between itself and AMERITECH ILLINOIS for termination on each other's networks and if it imposes costs on AMERITECH ILLINOIS that are no higher than the costs imposed by TALK.COM. If a similarly situated carrier is allowed to purchase the service(s) under the same terms and conditions as provided in this contract, then this contract should not be considered discriminatory. Evaluating the term discrimination in this manner is consistent with the economic theory of discrimination. Economic theory defines discrimination as the practice of charging different prices (or the same prices) for various units of a single product when the price differences (or same prices) are not justified by cost. See, Dolan, Edwin G. and David E. Lindsey, Microeconomics, 6<sup>th</sup> Edition, The Dryden Press, Orlando, FL (1991) at pg. 586.

While rates for unbundled elements and services such as the high frequency portion of the loop, order processing charges, and collocation appear to be higher than *tariffed rates* (see Ameritech ILL. C. C. No. 20, Part 19 and Part 23) and rates in other interconnection agreements (See for example Arbitration Decision in Dockets 00-0027 and 00-0312), the fact that TALK.COM is willing to pay higher rates than other CLECs does not disadvantage those CLECs. TALK.COM may wish to negotiate better terms and conditions in future amendments to its interconnection agreement. The FCC has explicitly recognized that right, stating:

[W]e find that it is a per se failure to negotiate in good faith for a party to refuse to include in an agreement a provision that permits the agreement to be amended in the future to take into account changes in Commission or state rules. Refusing to permit a party to include such a provision would be tantamount to forcing a party to waive its legal rights in the future. (FCC, First Report and Order in FCC 96-325, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, (released Aug 8, 1996), ¶152.)

I have no reason to conclude that the agreement is discriminatory. Also, Section 252(i) of the 1996 Act allows similarly situated carriers to enter into essentially the same contract.

#### **B. Public Interest**

The second issue that must be addressed by the Commission in approving or rejecting a negotiated agreement under Section 252(e)(2)(A) is whether it is contrary to the public interest, convenience, and necessity. I recommend that the Commission examine the agreement on the basis of economic efficiency, equity, past Commission orders, and state and federal law to determine if the agreement is consistent with the public interest.

Several provisions contained in this interconnection agreement address issues that are currently before the Commission. Rates and terms for DSL and Line sharing are being disputed in Docket 00-0393; Non-recurring charges are being investigated in 98-0396; Collocation terms and rates are being investigated in docket 99-0615; Dark Fiber provisioning is being investigated in Docket 00-0538/00-0539; and Shared Transport and the UNE-Platform are being investigated in Docket 00-0700. Because these investigations are ongoing, it is unclear if these terms and conditions will comply with the Commission's final orders on these subjects. The DSL and UNE Remand Appendices both have sections reserving the rights of the parties to alter this agreement in order to comply with future Commission or FCC orders.

In previous dockets, Staff took the position that negotiated agreements should be considered economically efficient if the services are priced at or above their Long Run Service Incremental Costs ("LRSICs"). Requiring that a service be priced at or

above its LRSIC ensures that the service is not being subsidized and complies with the Commission's pricing policy. All of the services in this agreement are priced at or above their respective LRSICs. Therefore, this agreement should not be considered economically inefficient.

I have no reason to conclude that this agreement is contrary to the public interest and nothing in this agreement leads me to the conclusion that the agreement is inequitable, inconsistent with past Commission Orders, or in violation of state or federal law. Therefore, I recommend that the Commission approve the agreement subject to the implementation requirements of the next section.

## **IMPLEMENTATION**

In order to implement the AMERITECH ILLINOIS-TALK.COM agreement, the Commission should require AMERITECH ILLINOIS to, within five (5) days from the date the agreement is approved, modify its tariffs to reference the negotiated agreement for each service. Such a requirement is consistent with the Commission's Orders in previous negotiated agreement dockets and allows interested parties access to the agreement. The following section of AMERITECH ILLINOIS' tariffs should reference the AMERITECH ILLINOIS-TALK.COM agreement: Agreements with Telecommunications Carriers (ICC No. 21 Section 19.15).

Furthermore, in order to assure that the implementation of the Agreement is in the public interest, AMERITECH ILLINOIS should implement the agreement by filing a verified statement with the Chief Clerk of the Commission, within five (5) days of approval by the Commission, that the approved Agreement is the same as the

Agreement filed in this docket with the verified petition; the Chief Clerk should place the Agreement on the Commission's web site under Interconnection Agreements. Such a requirement is also consistent with the Commission's Orders in previous negotiated agreement dockets.

For the reasons set forth above, I recommend that the Commission approve the agreement under Section 252(e) of the 1996 Act.

## VERIFICATION

STATE OF ILLINOIS                    )  
  ) SS  
COUNTY OF SANGAMON                )

I, Melanie K. Patrick, Ph.D., do on oath depose and state that if called as a witness herein, I would testify to the facts contained in the foregoing document based upon personal knowledge.



SIGNED AND SWORN TO BEFORE ME THIS 11<sup>th</sup> DAY OF  
December, 2000.

  
NOTARY PUBLIC

